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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

DEC 19 2011

Uniform Issue List: 402.00-00

TIER, RA, T3

Legend:

Taxpayer A:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Company M:

Company C:

Plan X:

Amount M:

Financial Institution A:

Financial Advisor E:

IRA X:

Account Y:

Page 2

Dear

This is in response to your letters dated April 21, 2011, November 11, 2011, and November 23, 2011, submitted on your behalf by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3)(A) of the Internal Revenue Code (the Code).

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A, age , represents that he received a distribution from Plan X totaling Amount M. Taxpayer A asserts that his failure to accomplish a rollover of Amount M within the 60 day period prescribed by section 402(c)(3)(A) of the Code was due to an error made by Company C when it failed to follow the instructions of Taxpayer A. Taxpayer A further represents that Amount M has not been used for any other purpose.

On Date 1, Taxpayer A, prior to his retirement from Company M signed an election form electing a lump sum payment of his Plan X account balance and electing a direct rollover of the lump sum payment to Taxpayer A's existing IRA, IRA X, maintained at Financial Institution A. On Date 2, Company M issued a check in Amount M payable to Financial Institution A FBO Taxpayer A.

On Date 3, Taxpayer A, after receiving the check, sent the check to Financial Advisor E, a registered financial advisor with Company C, a broker-dealer for Financial Institution A along with a cover letter indicating that the money was a retirement distribution.

However, due to an error at the office of Company C, on Date 4, the check was coded incorrectly to be deposited into Taxpayer A's non-IRA , Account Y, also maintained by Financial Institution A. On Date 5, Account Y was credited with Amount M.

Taxpayer A was unaware of the error until he received Internal Revenue Service Form 5498, *IRA Contribution Information*, for year 2010 which reported that other amounts were properly rolled over from two other 401(k) plans but excluded Amount M from Plan X. Taxpayer A immediately notified Financial Advisor E of the error and sought possible remedies to correct the error. Taxpayer A received a letter from Financial Advisor E on Date 6, in which Financial Advisor E explained that he had previously discussed the planned rollover of Amount M, and that an administrative error on the part of Financial Advisor E caused the failure of Taxpayer A's intended rollover of Amount M.

Based on the facts and representations, you request that the Service waive the 60-day rollover requirement contained in section 402(C)(3)(A) of the Code with respect to the distribution of Amount M.

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution,

and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under sections 402(c) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.

Section 401(a)(31) provides the rules for governing "direct transfers of eligible rollover distributions".

Section 1.401(a)(31)-1 of the Income Tax Regulations, Question and Answer-15, provides, in relevant part, that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is a distribution and rollover, and not a transfer of assets and liabilities.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359, (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was due to the error made by Company C when it failed to follow the instructions of Taxpayer A.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount M from Plan X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount M into a Rollover IRA or another qualified plan. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the contributed amount will be considered a rollover contribution within the meaning of section 402(c)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you have any questions, please contact XXXXXXXXXXXX (I.D.# #####) by phone at XXXXXXXXXXXX or fax at XXXXXXXXXXXX.

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose

cc: